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## **Deepening Engagement through Assisted Bargaining: The Work of the Labour Relations Commission**

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*Innovations in Conflict Management*

*Research Papers*

**Research Paper 12**

**Deepening Engagement through Assisted Bargaining:  
The Work of the Labour Relations Commission**

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## Introduction

In conventional dispute resolution procedures, assistance from third parties, whether they be public dispute resolution agencies or independent facilitators, usually arises several steps into the procedure where deadlock has arisen. This has long been viewed as a key principle of voluntary collective bargaining in which the parties are expected to take primary responsibility for their mutual dealings and for striving to reach settlements in negotiations or disputes before seeking assistance from third parties (Steadman 2003). The ‘classic triad’ of dispute resolution activities, conciliation, mediation (often taken to mean a more directive style of conciliation in which proposals may be put to the parties by the third party) and arbitration, pivot around this principle (EIRO 2006; Valdes Dal-Re 2003; Welz & Kauppinen 2005).

One significant strand of innovation in conflict management involves turning this principle on its head by involving third parties at or close to the outset of negotiations, with a view to avoiding deadlock and encouraging agreement. State dispute resolution agencies and private facilitators now sometimes provide facilitation of this type. They can also act at the behest of Labour Courts or other adjudication bodies, in effect overseeing a return by the parties in dispute to direct talks in search of settlement.

In the UK, Acas conducts ‘assisted bargaining’ and describes the process as early assistance to the parties involved in collective industrial relations issues, with a view to preventing a dispute arising. In assisted bargaining the outcomes of negotiations remain in the hands of the parties, the role of Acas being to facilitate the parties in arriving at mutually acceptable solutions. In such circumstances an Acas facilitator might chair negotiations. Assisted bargaining tends to occur in cases where there is a history of disputes (Acas 2009: 4). A review of 25 years of Acas’s activities portrayed assisted bargaining or ‘advisory mediation’ as a process that was normally concerned with less urgent longer-term issues and thus more likely to be seen as ‘more preventive or strategic than dispute mediation’ (Goodman 2000: 38). It was observed that the distinction between assisted bargaining and conciliation was not clear-cut. In some instances initiatives such as the creation and chairing by Acas of ‘joint working parties’ to handle longer-term strategic issues might be an extension of conciliation, especially if undertaken against the background of a potential dispute or as part of a conciliation settlement (Goodman 2000: 38). In practice there was ‘some flexible blurring of

activities’ at the interface between conciliation and advisory mediation or assisted bargaining (Goodman 2000: 32).

The International Labour Organization (ILO) identifies ‘facilitated negotiation or assisted bargaining’ as a form of ADR that is less commonly used internationally than other ADR practices. The ILO defines the process as the use of independent third parties that facilitate a negotiation process before any dispute has arisen. The facilitator uses chairing and mediation skills and, with the permission of the parties involved, can hold private meetings with each as part of the facilitation process. The process is sometimes preceded by negotiation skills training and a pre-negotiation meeting (Steadman 2003). In the case of public service dispute resolution, the ILO advocates ‘active facilitation’ in the pre-bargaining phase of negotiations that might involve multiple unions, with possibly conflicting bargaining priorities (Thompson 2010: 25). Facilitated negotiations are also presented as a form of positive dispute prevention rather than reactive dispute resolution, where pre-emptive steps can be undertaken by the facilitator to shape bargaining dynamics from the outset (Thompson 2010: 31).

The ILO observes that assisted bargaining can be facilitated by independent professionals or by state agencies involved in conflict resolution. Another agency providing assisted bargaining is the South African Commission for Conciliation, Mediation and Arbitration (SACCMA) The SACCMA is available to assist parties involved in restructuring negotiations at the outset of their mutual engagement and can provide a route to gaining agreement on a protocol for engagement. The facilitator also chairs negotiations (Thompson 2010: 31).

Collective bargaining that has not become bogged down in disputes or conflict is also facilitated by the US Federal Mediation and Conciliation Service. The FMCS can assist employers and unions by providing mediation from the outset when contracts are open for renegotiation and also by convening and facilitating dialogue and negotiations involving public service employers and unions (as well as other parties) (FMCS 2012; Thompson 2010: 32). ‘Proactive labour-management facilitation’ by the FMCS is equated mainly with the provision of joint training for partnership initiatives (Cohen 2010). However, following the advent of the Great Recession, the FMCS’s role as proactive facilitator broadened into a ‘new model for managing labour-management conflicts’ (Cohen 2011). This new model included the provision of joint training, as

before, but extended into a series of additional modes of mediation. These included convening seminars on good practice in joint problem-solving and early contract (re)negotiation; facilitating partnership structures and arrangements; being available to parties in instances where intense conflicts were anticipated or had arisen; early involvement in areas of the public sector, such as education, where reform programmes were being implemented to provide both training and facilitation to support interest-based bargaining (Cohen 2011).

The well understood problem of distinguishing in practice between different forms of dispute resolution, the blurred interfaces between modes of third-party involvement and the fact that ‘diversity prevails over homogeneity’ in different dispute resolution systems, makes it difficult to portray trends in the field, particularly in Europe, where the problem is compounded by different legal systems and traditions (Valdes Dal-Re 2003: 14; Welz & Kauppinen 2005). Some commentators hold that developments like more intense international competition, new forms of work organization and greater involvement by unions in company decision-making are leading to a growing reliance on the ‘classic triad’ of dispute resolution activities as against the judicial determination of disputes (Valdes Dal-Re 2003) or to a greater emphasis on co-operation over confrontation (Brown 2014). Brown (2014) has noted in this context that in the Anglo-American world dispute resolution agencies have been devoting more resources to promoting better industrial relations. With respect to assisted bargaining specifically no trends are identified. In the US it has been observed that ‘interest-based bargaining’ has gained widespread use in the private and public sectors, with the result that mediators or facilitators, whatever their provenance, have had to become skilled in facilitating this process, as well as in conciliating in more traditional adversarial or positional bargaining (Kochan & Zack 2013: 171).

Facilitation in interest-based bargaining is seen to involve the combined use of mediation processes and tactics to educate and guide the parties through stages of standard problem-solving with a view to reaching agreements that better serve the interests of the parties than traditional compromise-oriented processes (Kochan & Zack 2013: 175). Barrett & O’Dowd (2005: Ch. 6) identify a series of core features of facilitation in interest-based bargaining, drawing on their experience as facilitators in the US and Ireland. As in conventional conciliation the facilitator needs to be seen at all times as neutral and to demonstrate independence and integrity so that trust can be established with the parties.

More distinctive however are the roles adopted by facilitators in the bargaining process. Having established the parties' expectations, facilitators might conduct information and training workshops in which the parties establish ground rules and practical arrangements surrounding negotiations. During negotiations facilitators assist with problem-solving and in addressing process difficulties. Parties may need assistance to identify interests, generate options and to agree the criteria for assessing options. Finally, the parties might seek assistance from the facilitator in drafting documents in which agreements are recorded and in subsequently evaluating the bargaining process (Barrett & O'Dowd 2005: 91–5). It is clear from Barrett & O'Dowd's account that, although facilitators in interest-based bargaining may be proactive in informing and assisting parties with respect to bargaining principles, stages and techniques, they generally adopt a non-directive style of mediation.

While facilitation and assisted bargaining have attracted interest and commentary, especially as distinctive mediation processes that may be growing more common in response to secular trends in the economic and business environment, few empirical studies exist internationally of assisted bargaining and the role of third parties in facilitating the bargaining process in this manner.

The Labour Relations Commission brokers agreements between employers and unions in both conventional ways and through a process that is called 'facilitation' and that includes assisted bargaining as understood in the literature. This chapter **[paper/section?]** examines the role of the LRC in assisted bargaining, supported by the comments of facilitators and by case studies of instances of assisted bargaining. Drawing on eight interviews with industrial relations officers with experience of facilitation and often of assisted bargaining, it begins with an examination of the LRC's broader facilitation function and then examines the specific third-party processes involved in assisted bargaining as a mode of facilitation.

Interviews with all those who had experience of assisted bargaining focused on the following areas:

- The circumstances in which organizations and unions seek assistance from third parties.
- The processes involved in assisting the parties to collective bargaining.

- The challenges involved in facilitating the parties to reach agreement.
- The objectives of the parties in seeking assistance and the outcomes attained.
- Views on trends in the use of assisted bargaining by organizations and unions.

## **Facilitation**

Within the LRC, support to employers and unions early in the process of negotiation is provided as part of a more general set of activities known as ‘facilitation’. The LRC has engaged in some 30–40 instances of facilitation each year in recent years. The overall incidence of facilitated bargaining remains modest in the context of a case-load of over 1,000 referrals to conciliation in 2011, although, as will become clear, facilitation can arise in significant employments and involve major incidents and complex change and reorganization programmes.

A broad spectrum of employers and issues provides the focus for facilitation. Both large prominent firms and small employers have been supported, as have organizations in the private and public sectors. Facilitation agendas can range from single issues to complex multifaceted issues or relationship problems of a basic character. In some instances facilitation is provided in disputes about union recognition, or in firms where unions are not recognized.

Facilitation, as provided by the LRC, was described by a senior officer as ‘extra procedural’ in nature: that is parties avail of this form of assistance in circumstances where either one or both do not wish to enter or engage with standard disputes procedures, which might either be predicated on union recognition, or involve steps or stages culminating in LRC conciliation, Labour Court hearings, or equivalent procedural stages in public service organizations. Parties may also avail of facilitation where all stages of procedures have been exhausted and where problems or disputes nevertheless remain partially or wholly unresolved. Facilitation may also be extra-procedural in the sense of it being availed of by groups outside the formal jurisdiction of the LRC and the Labour Court.

Extra-procedural support involving facilitation has been offered and along a spectrum marked at one extreme by explorations surrounding issues in contention or disputes over union recognition, and at the other by support for parties who had exhausted all procedural steps or for groups not strictly within the formal jurisdiction of the LRC.

At one end of the spectrum were instances where facilitation involved exploring ways of dealing with complex and sensitive disputes, such as liability for funding redundancy payments. In one such instance, involving a high-profile public institution, the parties ‘needed some way to have a conversation without it going anywhere or getting out into the public domain’. The facilitation process resulted in an outcome that satisfied the parties and avoided reputational damage to the institution involved. Other complex and technical disputes addressed by means of facilitation included industrial relations issues arising around transfers of undertakings.

Also at this end of the spectrum were instances where facilitation was availed of where employers had refused to concede recognition and disputes had arisen either around the issue of recognition, or surrounding terms and conditions of employment in firms without union recognition. An example involved a services business engaged in a bitter recognition dispute that had led to work stoppages. The LRC offered its services to the parties to facilitate a solution through bilateral contacts and meetings, aware that inviting the parties to conciliation would meet with rejection from the employer as it would have been viewed as tantamount to negotiating with the union and hence recognition. In a case such as this, firms could ‘still stand over their reluctance to engage with unions by engaging through the mediator with the union’. In another instance unionized staff in a number of outlets operated by a multinational firm simply sought the resolution of a dispute over changes to terms and conditions of employment. Facilitation was offered and involved the parties occupying separate rooms in the same building, with the facilitator acting as a go-between (this process was referred to in media reports as ‘proximity talks’). In other disputes where unions are not recognized, however, the parties might demur from meeting a facilitator in the same building or even in the same town.

In another case of a non-union firm a dispute arose over severance terms. When the firm announced its intention to shift activities to another country employees formed a working group to protest the severance terms on offer. Their militant and determined leadership sought the assistance of the LRC. Senior management in the parent company were contacted and readily agreed to enter a facilitation process. Through intensive efforts on the part of the facilitator, satisfactory revised terms were agreed and accepted. Here facilitation had secured the ‘peaceful departure of a company’ on terms acceptable to all involved.



At the other extreme of the facilitation spectrum were circumstances where the parties had exhausted all steps in a disputes procedure and were assisted to resolve remaining differences by moving beyond the reach of the formal agreed procedure. Instances included a public agency in which a dispute had been subject to Labour Court recommendations but remained unresolved. In the shadow of a high-stakes threatened strike and other forms of protest by staff, the LRC, having explored the ‘situation on the ground’, facilitated an intensive process that agreed a framework for settling the dispute. Another case involved a claim for re-grading that had been the subject of a Rights Commissioner hearing. Legislation dictated that the substantive issue, which remained unresolved, could not return to conciliation. The parties agreed to facilitation and a solution was arrived at. Employers and unions operating within the Croke Park or Haddington Road agreements had also sometimes sought and obtained assistance outside of formal dispute resolution procedures that might have led them through prescribed dispute resolution stages, ending in binding arbitration.

Extra-procedural support was also provided at different points within or along this spectrum. The most common instances arose where firms and unions were parties to conventional disputes procedures but wished to engage outside the context of those procedures and avoid finding themselves on a ‘tramway to the Labour Court’. In some such instances, particularly in larger firms, familiarity with the work of the LRC and the experience of key managers and union officials with the time-lines and challenges involved in significant restructuring programmes were considerations in their seeking assistance to engage outside formal disputes procedures.

In other circumstances conventional conciliation, in the words of one person, ‘transmogrified’ into facilitation when it emerged at conciliation that the immediate issue in dispute, for example, plans to make people redundant, reflected deeper underlying problems that might benefit from facilitated engagement around multiple issues. In these situations ‘conciliation [could] meld into facilitation’ in a process that was seen to have the ‘inherent flexibility to adapt as the dialogue evolved’:

As you get into [conciliation] it broadens out into a wider, deeper facilitative exercise to allow the parties to consider things in the round and to broaden and deal with their agendas in a facilitated environment, rather than [their being confined to] a specific dispute situation.

Conciliation might also trigger facilitation in a more confined manner, such as in the case of a private hospital where the employer and union entered conciliation to resolve a dispute over a change to conditions of employment. The person responsible for conciliating took the initiative and shifted the basis on which the dispute was being addressed:

I came up with a solution for them that gave them breathing space to try to sort it out. Basically it involved setting up a joint working party to review the whole [thing] and clarify for the workers what was involved. The union said to me ‘would you chair that, facilitate that?’ ... . They just left me to do it with a small group of local managers and shop stewards. It went very well and, as it turned out, I think they resolved it after the first meeting.

As practised by the LRC, facilitation emerges then as a very flexible mode of dispute resolution and sometimes of dispute prevention. Drawing on the spectrum of circumstances in which the LRC has become involved, Box 12.1 seeks to categorize the main modes of facilitation employed by the LRC. To begin with there is what might be termed ‘exploration and informal diplomacy’. Here, as in cases of disputes surrounding union recognition, or in firms where recognition had been withheld, the facilitation process may be tentative and cautious, and the parties may refuse to engage face-to-face, or even to meet with LRC officers in the same building or location. Also included in this category are instances of facilitation where the focus is on establishing what issue(s) are in dispute or who the parties to a dispute actually are, as in the case of the public service organization dealing with redundancies, where liability for payments was unclear and subject to dispute.

Next are activities where facilitation is provided in the shadow of adjudication by agencies like the Rights Commissioners or the Labour Court. The LRC acts to broker settlements, taking account of the positions of adjudicating agencies. Here, brokerage activity is more directive and the parties engage face-to-face and in side-conferences in a process that is typically highly directive and controlled by the facilitator. Finally, as will be discussed at length in the next section, there are facilitation activities that involve ‘assisted bargaining’, as this process is commonly understood in the international literature. Here, the LRC facilitates engagement between employers and unions outside

the context of a dispute. As will emerge, facilitation tends to be less directive than in conventional conciliation or in what has been described as brokerage in the shadow of adjudication. Without the immediate pressures of finding a settlement for a dispute, the time horizon over which issues might be addressed can be longer than pertains to other circumstances where facilitation is provided.

### Box 12.1 Modes of Facilitation

**Exploration and Informal Diplomacy:** Facilitation is non-directive and mainly involves exploratory sounding or talks and possibly cautious and tentative dealings with parties, particularly employers. The standard operating procedures of conciliation are suspended in favour of informal offers of assistance to one or both parties. Facilitation may be conducted mainly by phone or email. The parties may have no direct dealings with each other and fail to agree to meet simultaneously in the same building, or even to engage with the facilitator in the same location. Proposals for settlements are understood to emanate from the facilitator.

**Brokerage in the Shadow of Adjudication:** Facilitation mainly involves directive conciliation and is conducted in the shadow of a recommendation by the Labour Court or decision by a Rights Commissioner, or by suspending adjudication pending direct engagement between the parties. Mandate to seek solution to dispute takes account of the position of adjudication bodies.

**Assisted Bargaining:** Facilitation is non-directive, oriented to a longer time horizon and conducted outside the context of a dispute. Bargaining agendas are often complex or technical in nature and the parties to bargaining commonly seek the assistance of an independent third-party to facilitate settlement.

### Assisted Bargaining

This section considers in more detail the features of facilitation when practised in circumstances where no current dispute exists and where the parties to facilitation have opted to address significant issues outside of standard dispute resolution procedures.

In the LRC the practice of assisted bargaining stretches back to the 1990s. The LRC's first Director of Conciliation traced the advent of this kind of intervention to several significant disputes during that decade (McGee 2013). In Waterford Crystal, Aer Lingus and ESB, all affected by major changes in commercial conditions, two LRC officers were assigned to work with management and unions over periods of up to four months. In the case of Waterford Crystal, a strike was already underway when LRC officers were

assigned to assist the parties at the behest of the Minister for Labour. This dispute established a precedent for embedding LRC officers to work intensively over a longer period than usual in conventional facilitation. In Aer Lingus, where the LRC became involved at the behest of IBEC and ICTU, the same approach was adopted to facilitate complex negotiations surrounding restructuring. This time the exercise was ‘preventative’ and work stoppages were avoided. The LRC facilitated a complex series of negotiations in Aer Lingus that were ‘extremely intensive and extremely long’ in a firm with a somewhat fractious industrial relations legacy:

First of all there was no actual dispute comprehended at the time and in fact it never actually got near that situation ... . There [was] a lengthy agenda covering all areas and the idea was to achieve a transition to a leaner, slimmer, more efficient airline with different work practices ... .

The facilitation process in Aer Lingus included conciliation sessions that had addressed a raft of difficult and contentious issues. The LRC became involved in a similar capacity in 2001 when the airline sought agreement with its unions on a survival plan. At that point the context was different: ‘it was much more conciliation because there was a very real and definite threat of action and there was a real and definite threat of the company closing.’ The LRC issued a detailed set of recommendations to the parties, which in effect involved a form of adjudication.

In the case of the ESB, management and unions participated in a joint ‘cost and competitiveness review’ that was facilitated by the LRC. The process again involved assisting negotiations around multiple issues in the context of disjunctive commercial change triggered by liberalization of the energy market, instigated by the EU. The LRC’s involvement was at the request of the ICTU’s General Secretary, Peter Cassells, who had acted as an external facilitator of the cost and competitiveness review (McGee 2013: 61–4). Another early instance of assisted bargaining arose in Irish Rail during the mid- to late-1990s. In this case the LRC engaged in a two-and-a-half year facilitation process across 33 bargaining units resulting in radical changes in work practices and working time arrangements in the company. Further early initiatives in facilitation were undertaken in Irish Sugar and Irish Ferries.

These early instances of assisted bargaining had a number of salient features. The LRC’s involvement as facilitator was intensive and protracted and the parties addressed complex

and multifaceted restructuring challenges, often in circumstances involving radical commercial or regulatory changes. LRC facilitation sometimes occurred in the absence of a dispute. The process of facilitation sometimes included quasi-adjudication, taking the form of reports and recommendations issued to the parties. Some of these early features of assisted bargaining were to remain integral to the LRC's subsequent work in this area.

Assisted bargaining is defined both by circumstance and by process. The circumstances that shape the work of the facilitator are that no current dispute exists, pressures for a settlement or agreement are less acute or pressing than in conventional conciliation, or even other modes of facilitation, and the ensuing engagement may occur over a longer time-horizon. As with facilitation more generally, the parties have also opted to step outside of standard multi-step procedures with provision for conciliation where an *impasse* occurs, followed by adjudication by the Labour Court. The process of facilitation in assisted bargaining is also distinctive in significant respects but remains anchored in the main in standard conciliation skills.

In the experience of LRC officers adept at assisted bargaining and modes of facilitation, the default skills and processes involved are very similar to those that are applied in conventional dispute-based conciliation. For some of those interviewed the dominant mode of dispute resolution provided by the LRC is 'directive conciliation', involving an 'assertive approach', where the third party presses for a settlement and 'heads are banged together' to that end. This view is epitomized by the maxim of a former Director of Conciliation regarding dispute resolution in the LRC: 'just get them fixed and out' (McGee 2012:55). Facilitation, whether provided in instances where assisted bargaining occurs, or in other circumstances, is not then understood as being characterized by any distinctive or proprietary dispute resolution process or template.

Consistent with this view, when LRC officers described their work as facilitators, the major activities and processes involved were represented as drawing on skills at the core of classical conciliation. These included communicating with the parties, identifying their expectations, conveying information between them, seeking out areas where compromise might be achieved, chairing meetings and maintaining momentum. Also prominent are other activities and processes, such as holding side conferences and caucus meetings with principals to explore problems and areas around which movement might be possible; prompting the parties to consider how their positions were likely to be viewed by

adjudication bodies such as the Labour Court; identifying areas of agreement as a basis for drafting ‘without status’ documents – containing proposals that formally ceased to have any standing if rejected by the parties – that might focus discussion and provide an eventual basis for settlement. Sometimes those facilitating assisted bargaining might even present proposals to the parties. Essentially the same values and qualities that were understood to be imperatives in conciliation are also seen to matter in facilitation, especially impartiality, trust and confidence in the facilitator.

The interviews made clear that within the LRC little distinction is made or recognized between the process of facilitation, whether in instances of assisted bargaining or in other circumstances where facilitation occurs, and the process of conciliation. This is evident from the following comments by different people: ‘In my experience it’s pretty much the same skill set.’ ‘Very often it’s the same sort of template.’ ‘To me it’s like a variation on the same thing.’ ‘I see very little that’s different; the outcomes are different [in the sense that facilitation typically involves no onward referral into disputes procedure and ultimately to the Labour Court].’ ‘So you have this word “facilitation”; to me it’s the same thing by another name.’ ‘Who cares what it’s called.’ ‘There isn’t a qualitative distinction between what you would do under the heading “facilitation” and what you would do under the heading “conciliation”.’ ‘These are labels. I mean assisted bargaining, conciliation. At the end of the day it’s problem-solving.’ ‘I’d be guided by the needs of the parties. If the needs of the parties are for facilitation, the template is exactly the same.’ ‘A lot of words are used for convenience, for the optics.’ ‘A rose by any other name is still a rose.’

But the conduct of facilitation, as outlined above and in Box 12.1, was marked by a significant degree of process flexibility. Facilitation could be attuned to the different sets of circumstances in which it was offered. In the case of assisted bargaining the default conciliation skill-set is adjusted or transposed in a number of significant ways. These reflect the genesis of assisted bargaining in circumstances where one or both parties seek support from the LRC of a ‘more proactive’ nature because no dispute exists and no claim is on the table. Assisted bargaining is portrayed by some facilitators as ‘more informal’ than classical conciliation. It is also seen to be more intensive and often, but not always, more prolonged in nature than conventional conciliation and facilitation activity. The parties also tend to be ‘less confrontational’ in their dealings with each other. Facilitators tend to be ‘more relaxed’ and ‘less assertive’ in their dealings with the parties than when

involved in conventional conciliation because the process may be ‘less about fire-fighting than about prevention’:

It immediately suggests to me something long-term ... . ‘We need help with restructuring, rationalization, a major negotiation.’ In conciliation when people come in it is [about] ‘what are you prepared to do?’. From the ‘get-go’ it’s like ‘let’s do the business’, whereas with [this type of] facilitation it’s more a long-term process, [involving] more hand holding, bringing them along, if you like. It’s more time-consuming ....

Quite often we’re less assertive because in a dispute situation you really do have to press people very hard to face reality and to get a conclusion because we don’t have the luxury of not getting to a conclusion. Whereas in a facilitative exercise over a more extended time-frame ... you can actually allow time for parties to come together and go apart, to facilitate a lot more extended dialogue. The facilitator doesn’t have the luxury of not so much laying down the law but being quite assertive in the environment because you’re actually trying to facilitate people coming together.

Comments by other officers with experience of facilitation in an assisted bargaining context also underscore the less assertive or less directive role of third parties in this mode of facilitation, which was also portrayed as more diffuse or ‘touchy feely... bordering on mediation’:

There may be an ongoing workshop. The participants want a facilitator to guide them through a difficult period where they’re talking face-to-face over a long period of time, and eventually the facilitator just fades into the background. ... You’re literally just chairing meetings between the parties.

If the parties wanted facilitation, a clinical facilitation, you may just be acting as chairman throughout a full process, where the parties are talking [and] have a set agenda.

Notwithstanding the less directive role of the facilitator in instances of assisted bargaining, compared to classical dispute conciliation, it was clear, as well, that directive interludes could arise in which the facilitator might seek to focus the parties and inject urgency into the process. Directive interludes could affect both the substance and process of facilitation. The facilitator might advocate the benefits of proposals on the table to one or other of the parties, feeling less constrained by the impartiality that needs to be maintained more strictly in conciliation. An example was provided of a management proposal in assisted bargaining talks in a pharmaceutical firm where the facilitator sought to 'focus' the unions by highlighting that the management proposal meant offering money rather than taking money away. Directive interludes might also seek to alter the pace of engagement or the urgency attaching to reaching settlement. To prevent the often intensive and prolonged nature of assisted bargaining becoming an obstacle in itself to a successful outcome, facilitators sometimes chose to become more directive by setting time limits to their involvement or insisting on making evidence of progress a pre-condition for their continuing involvement. As one colleague advised another 'tell them at the next meeting, they do business or you're finished with them.'

The need on some occasions for directive interludes reflected a further feature of facilitation in assisted bargaining: the often slow and incremental nature of the process: 'the thing can be very frustrating because there's an awful lot of talking; [it is] very slow and it can go on and on.' This aspect of the process could be compounded where it involved large committees of local union representatives. This could make it 'difficult to move them; it's [a case of] small incremental steps.'

In disputes or impending disputes short-time horizons often set parameters for conciliation that could be conducted 'working against the clock'. Assisted bargaining outside the context of a dispute involved 'conciliation conducted over a longer time frame, without as much urgency about it'.

Otherwise, as outlined above, it was generally held that a 'reasonably defined set of skills' was deployed by facilitators, and that most of these were part of the typical repertoire of third parties:

A third party assisting parties to engage with each other, or to problem-solve, applies a reasonably defined set of skills with all the same ingredients around breaking down problems, isolating out the important



parts, facilitating people to vent and ‘paint the wall with issues’, and then facilitating parties to see a path forward and to isolate out what’s achievable and doable and helping the parties to understand what agreement actually is and what consensus is and what problem-solving is – all those kind of facilitative skills.

A sharp contrast was made by some facilitators between the manner in which they assisted the parties to collective bargaining and how they understood facilitation to be conducted in formal interest-based bargaining. This comment however needs to be seen in the light of the view conveyed by a contributor to the LRC focus group reported in Research Paper 7, that conciliation was now commonly conducted in contexts marked by some of the features of interest-based bargaining, in particular parties seeking ‘win-win’ solutions and exchanging their understandings and aspirations in that context.

The process of facilitation in assisted bargaining might include bilateral meetings with each of the parties, as occurred in conventional conciliation and in some other modes of facilitation. Understood as central to the conduct of assisted bargaining were core conciliation skills like identifying and removing ‘roadblocks’ to advance a broader process of engagement. A flexible approach and skill-set also extended to the provision of adjudication in some form as part of the facilitation process, if circumstances warranted.

Parties, particularly unions, sometimes entered assisted bargaining by making it explicit that this was ‘without prejudice’ to their options under existing ‘normal’ dispute resolution procedures. The implication was that, if the process failed to deliver the outcomes expected, other options might be exercised down the road, while the status quo was also being maintained unless it was changed in the process by mutual agreement.

Agendas and time frames in assisted bargaining tended to be set on the basis of employers’ objectives and time horizons:

I’ve never had to agree terms of reference as such ... . Usually what happens is that a company will say ‘look we’ve got to save €50 million or €100 million and here’s a plan’ ... . They might say ‘we need agreement on this by the end of March or June’, whatever it might be. ‘Can we come in and see you?’ ... ‘Will you facilitate us with it?’

So with respect to agendas and timescales most often it was a case of ‘the company presents their agenda and you try to get them [the company and unions] to agree a time scale.’ The fact that employers’ objectives tended to frame agendas and strongly influence timescales still meant that facilitators played a role in gaining agreement on terms of reference in the straightforward sense of clarifying and gaining accord on the basic ground rules of the process. These included the principle that the process involved a ‘stand-alone’ initiative, outside of normal industrial relations procedure. Early on in the process the facilitator might:

Sit down and talk to the principals to ensure that they know what they want and that, if they don’t know what they want, you can guide them and you can clear up a number of issues. ... You decide what your terms of reference are.

Facilitators emphasized the need to maintain flexibility in the assisted bargaining process as matters evolved and snags or blockages arose:

Our skill set is solution-focused. So if you’re suggesting, for example, that a working group may help and it’s shot down straight away that can then evolve into a joint training initiative where the principals on both sides are brought together off site and we draw up an agenda and we work through that agenda to the same end as a working group; but we’re just taking a more circuitous route.

Agendas in assisted bargaining can range from multiple items connected with complex restructuring programmes to challenging single issues. An example of an assisted bargaining cycle involving a complex restructuring programme is provided by the reconfiguration of acute medical services for a population of one million people in the Dublin North-East region of the Health Service Executive (HSE). This is outlined in Box 12.2. An example of assisted bargaining focused around a significant single issue is provided by a multinational pharmaceutical firm, where management presented unions with a proposal for a new framework for determining pay on a multi-annual basis linked with productivity. This case is outlined in Box 12.3.

## Box 12.2 The Reconfiguration of Hospital Services in the HSE Dublin North East

### Region

From 2007 to 2010 the Health Service Executive (HSE) implemented a *Transformation Programme* to improve healthcare delivery throughout Ireland. Among the ‘transformation priorities’ addressed were the development of integrated services across all stages of healthcare, the configuration of primary, community, continuing care and hospital services to deliver optimal and cost effective results.

These strategic priorities focused plans for the reconfiguration of healthcare delivery in the HSE North East Region, which straddles the counties of Louth, Meath, Cavan, Monaghan and North Dublin. The region serves a population of around one million people. The hospital service in the North East, outside North Dublin, comprised five local hospitals that delivered acute care to small populations. This was seen by the HSE as compromising service quality and patient safety. In the Louth, Meath, Cavan and Monaghan areas a key transformation objective involved the centralization of acute and complex medical care in hospitals in Drogheda and in Cavan and the provision of a series of day, outpatient and diagnostic services in hospitals at Dundalk, Monaghan and Navan.

The HSE North East Transformation Programme involved three stages: planning, design and implementation and commenced in late 2007. The programme began with plans to reconfigure acute hospital services in the Cavan-Monaghan area. Central to these was the transfer of services from Monaghan hospital, which employed about 180 people, to Cavan. About 80 people would move to Cavan.

Taking account of previous change initiatives in the health services, the management team resolved that all relevant information would be made available in a timely fashion to staff and unions with a view to preventing leaked information, media reports and rumours conveyed on the grapevine from disrupting progress. Managers resolved to address the many concerns of local staff. Clinical indicators of service effectiveness were discussed with professional medical staff. The area management group charged with implementing the reconfiguration programme was cohesive and nobody involved doubted the scale of the challenge they faced. The health unions were strong and influenced many aspects of the operational running of the hospital service. Medical consultants were forceful in defending their work arrangements. One of the key issues arising from the planned closure of accident and emergency service in Monaghan was the need for an effective thrombolysis service, which could stabilize heart attack victims prior to their being taken by ambulance to Cavan General Hospital. Considerable effort and training for paramedical staff went into the provision of this service in the Cavan–Monaghan area. Work was also done on step-down facilitation, rehabilitation beds and the provision of a minor injuries unit at Monaghan. Plans were also developed to redeploy some staff into community health services.

As the programme moved towards the implementation stage, managers engaged intensively with staff at all levels within the services and work sites affected and with the unions representing different categories of healthcare workers. The unions involved were the Services, Industrial and Professional Trade Union (SIPTU), The Irish Nurses and Midwives Organization (INMO), the Irish Medical Organization (IMO), the Irish Hospital Consultants Association (IHCA), IMPACT and the Medical Laboratory

Scientists Association (MLSA).

Few things spark more opposition than plans to close or re-designate local hospitals and opposition to the proposed changes in Monaghan General Hospital was intense. Political lobbying surrounding the issue for some time was stepped up. Protest marches and vigils brought thousands onto the streets of the town, adding to pressure on the negotiators dealing with plans to reconfigure the hospital service. Negotiations were unsurprisingly difficult and highly adversarial. Relations between the parties were unavoidably affected by community opposition and the political controversy that ensued. With the sides entrenched and little movement in prospect, the principals on the union and management sides agreed to seek the involvement of the LRC in a facilitation capacity.

The LRC first became involved in facilitating negotiations surrounding the reconfiguration of services in the Cavan-Monaghan hospital group on the joint invitation of management and unions. The parties had formed the view that they needed a third party to help manage and facilitate the process. The critical concerns for the unions were the redeployment of staff in different categories across hospital sites, as services were reconfigured, protecting job security and job opportunities and protecting earnings. These were the key areas in direct negotiations between unions and HSE management, which began in 2008 around plans to reconfigure services affecting Cavan and Monaghan hospitals. In these negotiations unions sought an overall framework for the reconfiguration of services that detailed the key milestones in the process and resourcing plans. They highlighted the need to protect posts, including promotional posts. Management accepted that redeployment guidelines needed to be agreed. Management was determined that appointments to the reconfigured services would be based on skills and fit with the positions to be filled rather than seniority. A guarantee of no job losses was provided to the unions.

The LRC became involved in facilitating negotiations between the parties in early 2009 and chaired intensive day-long negotiations based on agenda items that unions and management had been invited to submit. Given the number of unions involved, the union side in the negotiations could include up to about 20 national and local representatives. Among the areas addressed at the first LRC-facilitated meeting were compensation, loss of earnings, employment opportunities, service priorities, sequencing and timeframes and the principles governing redeployment. A framework document for the redeployment of staff was also agreed between management and unions. Redeployment would occur both between hospitals and between hospitals set to lose staff and all other locations within the HSE area. Where vacancies arose, these would in the first instance be filled through the redeployment of staff. The meeting also agreed a schedule of bilateral conferences between management and individual unions and communication processes surrounding the negotiations.

The LRC's involvement was constructive in facilitating the parties to engage and make progress. Industrial relations difficulties arose around the issues of redeployment and allowances. Further meetings facilitated by the LRC were held in March and April 2009. These addressed continuing issues surrounding redeployment and the backfilling of vacated posts pending the final designation of services at the hospitals. A national employment control framework, introduced to control staffing and pay-roll throughout the public service in the wake of the mounting national fiscal crisis, caused the parties concern. However, the transformation programme proceeded within the parameters of the

framework and with the blessing of key leaders on the management side.

A facilitated meeting in May reached agreement on a series of areas. All staff were to be provided with suitable redeployment options, including redeployment to posts currently filled by agencies and vacated through retirement. Management undertook to investigate all unfilled posts across the HSE area not presented to staff for redeployment. The parties agreed to observe the terms of prevailing national agreements and ‘not attempt to exert their desired outcome pending exhaustion of the industrial relations machinery of the state’. Unions and management undertook to continue local discussions between the various categories at Monaghan and Cavan General Hospitals. Where agreement could be reached on issues surrounding redeployment, this was to be recorded in writing. Where agreement could not be reached, matters in dispute were to be referred immediately to the conciliation service of the LRC. Claims for compensation for loss of earnings and disturbance were to be referred to the LRC separately by each individual union.

This ‘parallel process’ allowed the parties to proceed with redeployment activities without these becoming bogged down in industrial relations issues. Conciliation was subsequently conducted at the LRC to resolve disputes involving radiographers and laboratory scientists. A dispute about losses of earnings, disturbance and a diminution of promotion opportunities for laboratory scientists transferring from Monaghan to Cavan Hospitals was referred to the Labour Court. A dispute over staffing levels in Monaghan for non-nursing grades was referred to the LRC and then to the Labour Court, which nominated a facilitator to work with the parties to find a solution.

The LRC next became involved in facilitating the reconfiguration of services and redeployment of staff between hospitals in the Louth and Meath area. Acute general medicine and critical care were to be concentrated at Drogheda and day and outpatient services to be expanded at Dundalk and Navan hospitals. These hospitals would now become the focus for a range of local community health services. The same detailed preparations and briefing processes that had been undertaken in Monaghan were conducted in the Louth–Meath reconfiguration programme. Local opposition was less marked than it had been in Monaghan.

In the background to direct negotiations between management and unions was a serious deterioration in the national health finances. Pay cuts were implemented across the public service in 2009 and again in 2010. In early 2010 some public service unions declared that they would consider withdrawing co-operation with the health service transformation programme. Based on their experience of the LRC’s involvement in facilitating the reconfiguration of hospital services in Cavan and Monaghan, the parties agreed that the LRC should again facilitate negotiations. Local negotiations reflected the more difficult and resource constrained environment. The issue of loss of earnings again proved difficult and the parties sought to reach agreement on a framework for redeployment. The unions complained about reports in the press of contingency plans surrounding the transfer of acute medical services to Drogheda, about the lack of information that had been provided to them and also about the lack of engagement and communication with full-time officials. Management referred to plans for service reconfiguration being affected by a national shortage of non-consultant hospital doctors.

In March 2010 public service unions and employers concluded the Croke Park Agreement. The health service sectoral agreement contained within Croke Park included

a provision for co-operation with the reconfiguration of the health services and the redeployment of staff across service locations. Under Croke Park, unresolved disputes were to be referred to the LRC and onward to the Labour Court for binding arbitration.

The LRC facilitated a meeting in June 2010. The parties addressed the opening of a new emergency department at Drogheda and also plans to handle the transfer of acute medical services from Dundalk. At the meeting agreement was reached that management would hold immediate direct meetings with the unions impacted by the opening of the emergency department and also engage on the handling of the transfer of acute medical services from Dundalk to Drogheda. Management also committed to a recruitment process for vacant posts that would include all viable options.

The LRC's involvement in the transformation programme was intensive, involving around one meeting each month. The facilitation process involved a combination of plenary meetings, conferences with the principals and nominated representatives on both sides and standard conciliation meetings with the parties in separate rooms.

LRC facilitation rendered engagement between the parties less adversarial and more productive. Facilitation provided what was described as a mode of 'governance' of the talks process. Vetoes, the issuing of threats, refusals to engage around issues or the leaking of information to the media were no longer acceptable within the framework guiding the talks. Matters better dealt with in direct negotiations between management and unions were handled in this manner, not overloading plenary meetings with inappropriate business. In a more general sense the 'badge of the LRC' brought resolve and credibility to the facilitated negotiations.

In July 2009 acute on-call medical services transferred from Monaghan General Hospital to Cavan General Hospital. During 2010 the new accident and emergency department, which was three times the size of the original A&E unit, opened at Drogheda Hospital. A new coronary care unit was also established at the hospital in line with the reconfiguration of health services in the North East Region. Despite the difficult negotiations and highly charged protest activities in Monaghan, at no point was industrial action threatened or undertaken.

Sources: LRC, HSE and various media reports.

### Box 12.3 Assisted Bargaining at Wyeth/Nestlé Nutritionals

Wyeth Nutritionals, now part of Nestlé, has manufactured infant and child nutritional products at its plant in Askeaton, Co. Limerick, since 1974. The plant employs about 500 people and prior to its acquisition by Nestlé in 2012 was acquired by Pfizer in 2009.

The plant is strongly unionized and the workforce is represented by different unions. Unite represents administrative, mechanical and electrical grades. The TEEU also represents staff in mechanical and electrical grades. SIPTU represents operative grades at the plant.

In 2012 the company indicated to the LRC that they were considering appointing a facilitator to assist in talks with their unions on pay. The LRC offered to provide facilitation and an experienced Industrial Relations Officer, familiar with industrial relations at the plant, commenced the facilitation process in early July 2012 with the intention of concluding the process later that month when the plant closed for holidays. The process began with joint sessions with the administrative and the mechanical and electrical grades at which management outlined their proposed new framework for pay. The intention was that pay awards in future would be linked to improvements in productivity arising from changes in work practices. Pay increases were not to be discussed until the parties had agreed to changes required by management. The facilitator chaired sessions at which clarification of management proposals was provided and sought to move the process forward with the groups involved.

SIPTU were not a party to the facilitation process, as they were pursuing an outstanding pay claim that had been the subject of a Labour Court recommendation. The Labour Court had recommended that the union and the firm should return to talks under the aegis of the LRC and the parties entered conciliation provided by the LRC's Industrial Relations Officer for the region.

During the facilitation process, the administrative grades and the firm came to an understanding in principle on a new pay framework, contingent on the other groups involved also agreeing.

All grades involved in the facilitation process expressed concern that SIPTU was not involved and it became clear that agreement would not be secured until SIPTU's ongoing pay dispute with the firm had been resolved. Amid these concerns, progress was delayed and the original deadline for facilitation expired without the process being brought to a conclusion. Following conciliation, the SIPTU pay claim was referred back to the Labour Court. Prior to the scheduled hearing by the Court, the parties held direct talks that resulted in an agreement providing for an 8 per cent pay increase over the period to the end of March 2016, plus an additional day of annual leave.

Following on from the agreement with SIPTU, the company had consented to extend the terms agreed to grades represented by the TEEU and Unite. The groups can opt for this to be done through local talks or via the facilitation process.

Opinion on the part of management on the facilitation process was positive. In particular, the process was seen to have been designed and owned by the parties, and as having been flexible, as distinct from the conventional dispute resolution process, where the

procedure is prescribed and proceeds to being owned and controlled by the LRC. Facilitation provided by the LRC was also seen to have enjoyed credibility by being independent in a way that private facilitation, paid for by the firm, could not have been.

Sources: *Industrial Relations News* and LRC.

The facilitation process in assisted bargaining sometimes involves the use of a parallel conciliation process. The parties may resort to conciliation and adjudication around proposed changes to terms and conditions of employment. This parallel approach can prevent the mainstream facilitation process from becoming stalled by issues that can only or better be addressed and resolved through conciliation. An example is provided by the reconfiguration of health services in HSE North East, in Box 12.2, where some issues were referred to conciliation to prevent the overall facilitation process from becoming bogged down in differences that were not amenable to resolution in the facilitation process.

Reflecting on the alignment of facilitation and conciliation, a facilitator observed:

The parties certainly found that advantageous because if you're pursuing an agenda of change, you don't want to get bogged down in the IR issues. You need to be able to progress these.

People who had facilitated in the context of assisted bargaining also highlighted some of the challenges and problems that could arise. While one or both parties might have been willing to embark on the extra-procedural path represented by assisted bargaining, industrial relations legacies inevitably influence the process.

A case in point is that of the pharmaceutical manufacturing firm, summarized in Box 12.3. The union representing operatives, the largest category at the plant, pursued a claim for a pay rise on the grounds that this had been conceded by other plants within the firm. The firm sought to defend its refusal to concede the claim on the basis that a major cost saving and competitiveness programme at the plant had 'absorbed' the claim. Following conciliation the dispute was referred to the Labour Court. Management sought to respond to the claim on the basis of discussions on pay and productivity. The Court recommended that the parties enter joint discussions facilitated by the LRC. With a view to escaping a legacy of difficult industrial relations, the firm opted to seek agreement on a new multiannual framework for pay based on productivity by means of facilitation rather than conventional collective bargaining and the associated disputes procedure.



They became frustrated with the length of time it takes for an issue to proceed from local discussions through to the Labour Court because, inevitably, everything, no matter how big or small, ends up as a row. So they were looking for a mechanism to bypass the frustration.

The industrial relations legacy was compounded by a complex bargaining structure in which separate unions represented general operatives, electrical crafts and combined mechanical, technical, engineering and administrative grades. Notwithstanding the Court's recommendation, operatives at the plant sought to address the claim on its merits within conventional conciliation, opting to remain outside the facilitation process that had been engaged in by other categories at the plant. The result was a dual-track approach where the largest category remained within conciliation while other categories agreed to proceed on the basis of facilitation.

Legacy issues could also surface in other ways in an assisted bargaining process. An instance was given in which unions distrusted each other and remained as reluctant to work together within the facilitation process as they had been in conventional collective bargaining. Gaining agreement from the large group of shop stewards also made progress difficult. In an instance involving a manufacturing firm, significant but varying progress had been made in facilitation with a number of categories involved. The facilitator sensed that management would have been prepared to allow them to arbitrate on unresolved matters – in effect adopting mediation–arbitration ('med-arb'). The unions, on the other hand, had engaged in facilitation 'without prejudice' and expected to revert to normal industrial relations procedure (involving conciliation) if agreement could not be reached. Any other means of dispute resolution would have involved shop stewards relinquishing power, which they were not prepared to do.

While the adoption of a dual-track process, in which some categories engaged in facilitation but others sought to proceed through conventional collective bargaining, could allow facilitation to progress, the fact that a large category opted to proceed through conventional collective bargaining and conciliation meant that they might 'hold the cards' with respect to the eventual success of the process. The case of the manufacturing firm outlined in Box 12.3 exemplifies this. In this instance a new pay determination framework was obviously predicated on all categories being willing to settle. When management and the plant's operatives failed to resolve the long-running

pay dispute in conciliation, the dispute was referred back to the Labour Court. The facilitation process was then suspended pending the outcome of the Labour Court investigation. The facilitator was asked by the company to return at that point to bring the process to a conclusion.

Facilitation and conciliation operating as parallel processes *within* assisted bargaining appears to present few problems, with each process reinforcing the other. An example is provided by the reconfiguration of hospital services in the HSE Dublin North East Region (see Box 12.2). Here the LRC facilitator made provision for conciliation by another officer on the contentious issue of loss of earnings for staff transferring between hospitals. What the parties referred to as the ‘parallel process’ allowed them to proceed with the handling of staff transfers and other aspects of service reconfiguration without these being bogged down by spin-off industrial relations disputes. The LRC’s facilitation of collective bargaining in this case helped the parties to resolve highly contentious issues surrounding staffing levels, new facilities and services, staff transfers between work sites and compensation for loss of earnings in an environment that became financially increasingly difficult and constrained over the period during which the changes were introduced. Hospital services were eventually reconfigured across five work sites without industrial action occurring in a process that was logistically complex and involved an equally complex set of negotiating issues.

The main features of assisted bargaining, as facilitated by the LRC, are summarized in Box 12.4.

#### **Box 12.4 Features of Assisted Bargaining with Facilitation Provided by the LRC**

- No current dispute between the parties involved.
- Proactive in addressing significant issues or multiple issues.
- Proactive in seeking to forestall disputes.
- Process applies core skills of classical conciliation, adjusted to facilitating engagement in non-dispute circumstances.
- Longer time horizons by parties than in other forms of facilitation or conciliation and process conducted without the urgency engendered by a dispute.
- Parties opt to step outside conventional dispute resolution procedures.
- One or both parties seek to depart from conventional adversarial engagement.
- Less directive style of facilitation.
- Conciliation may be provided and proposals may sometimes be presented to the parties.

- Deeper engagement than would be possible with conventional collective bargaining, facilitation or conciliation.
- Facilitation process can encompass conciliation and possibly adjudication/ arbitration.

Turning to the objectives of employers and unions in opting for facilitation and the outcomes they had achieved, there was a strong level of agreement between facilitators. Facilitators emphasized that the parties involved in assisted bargaining were mainly concerned with reaching agreement on substantive or concrete issues. Process or relational outcomes, like changes in underlying relationships between the parties, were not common objectives. Sometimes assisted bargaining was seen nevertheless to have deepened levels of engagement between the parties involved and, in this way, to have resulted in improvements in the underlying quality of employment relations. Where this had occurred, however, it was seen to have arisen as an offshoot of a process where more immediate and pragmatic objectives dominated. Even in those instances where facilitation had occurred against a background of a legacy of difficult or fractious industrial relations, the focus of the parties, as of the facilitator, was on substantive outcomes. Those providing facilitation sometimes highlighted this pattern by commenting that the process was generally ‘non-transformative in the sense of relationships’. Within the LRC there was an understanding that relationship issues were better handled by the agency’s Advisory Service, which assisted employers and unions to develop more professional and positive postures and more effective structures for the conduct of industrial relations.

Overall assisted bargaining was judged as having often worked successfully. But it was not seen as a panacea. Facilitation might assist parties to find agreement on many issues and even to move away from adversarialism and ‘fire-fighting’ towards anticipating change and dealing with it in a less contentious manner. But the process had sometimes collapsed and disputes had resulted, especially where complex restructuring programmes had been at issue. In those circumstances unresolved issues could be dealt with through conventional dispute resolution procedures and especially through conventional conciliation. So the process even if not successful might nevertheless still provide an ‘orderly path to an industrial dispute that is then amenable to resolution through conventional dispute resolution mechanisms’. The process could also educate the parties

involved, providing them with a deeper understanding of the issues being addressed and a better appreciation of the concerns of their interlocutors. Where the process had terminated in a dispute, it might have narrowed down the issues requiring conciliation or adjudication.

LRC facilitators anticipated that there would be a growing demand for this mode of conflict resolution. In part this was understood to reflect a growing practice among firms to choose third parties with the expertise to respond to the specific types of challenges they faced. This in turn was seen as one aspect of a more general trend among employers to pay for services on a 'need to' basis. It was observed that rather than paying fees to an employers' association to avail of the services of an assigned case officer in the event of a problem or dispute arising, firms now seemed more intent on using their resources to 'buy the best in the business' as the need arose. By proceeding in this manner firms also gained more control over the manner in which issues were handled.

## Conclusions

It is a longstanding axiom of conflict resolution that third parties ought to assist with the search for agreement only after the parties directly involved became deadlocked and registered a failure to agree. Third-party involvement in assisted bargaining stands this principle on its head by bringing third parties in at the start or early on with a view to helping employers and unions to avoid deadlock, gain deeper engagement and reach agreement without becoming involved in a formal dispute.

Within the LRC, assisted bargaining comprises one of several modes of facilitation. While the LRC's work in assisting the parties to collective bargaining outside of dispute situations draws heavily on classical conciliation skills and techniques, these skills are nevertheless transposed in important ways. Third parties work in a less directive manner and facilitation has a longer-term focus than commonly arises in conciliation. Irrespective of the core skills and methods deployed, facilitation in assisted bargaining generally operates through plenary and side conferences, prioritizing plenary or joint sessions more than would be typical in conciliation. Informal soundings and formal and informal meetings with principals are conducted to explore problems and identify avenues to settlement. Documents may be drafted to record areas of agreement, possibly 'without prejudice' to the eventual positions of the parties.

Facilitation can involve informal and formal conciliation initiatives. In the LRC, facilitation cases have sometimes included formal conciliation conferences, conducted by different officers to those involved in assisting the parties to collective bargaining.

The complex and blurred relationships between the processes of facilitation, conciliation and adjudication in assisted bargaining extend to the complex sequences in which these processes may progress. In some instances facilitation triggers conciliation and proceeds onward to adjudication. In other instances, requests for conciliation may trigger facilitation, possibly combining formal conciliation efforts and leading onwards to adjudication.

Irrespective of the primary methods adopted or the sequencing of different processes, the primary purpose of assisted bargaining is to deepen engagement and make the process of collective bargaining more effective than when conducted directly between employers and unions, supported by conventional dispute resolution procedures. While assisted bargaining initiatives sometimes end in failure and even in disputes and work stoppages, the general view of facilitators is that the process was effective in helping employers and unions to gain a deeper understanding of both their interlocutors' and their own interests and thereby to reach agreement. Those involved in facilitation were unanimous in the belief that the primary objective of employers and unions in undertaking facilitation was to reach agreement on concrete issues that often arose in the context of complex change programmes. Relational outcomes, such as ongoing improvements in industrial relations, where they arose, were seen as beneficial but usually unintended consequences of a process with more immediate and prosaic objectives.

Assisted bargaining was triggered by a series of influences. Complex change and restructuring programmes were commonly identified as important influences. Intrinsically difficult issues, like changes in payment systems and working-time arrangements, or proposals for the use of outsourcing, also triggered assisted bargaining. The resolve of parties to step outside established disputes procedures to explore ways forward could also be an influence. The predominant view of these interviewed was that the use of facilitation to assist employers and unions engaged in collective bargaining had grown and would continue to grow over the medium to long term.

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